

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Boerger, et al.	Examiner:	Carlos A. Azpuru
Serial No.:	10/784,331	Group Art Unit:	1615
Filed:	February 23, 2004	Docket No.:	BD-001-US
Title:	DEVICE FOR THE TREATMENT AND PREVENTION OF DISEASE, AND METHODS RELATED THERETO		

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**RESPONSE TO RESTRICTION REQUIREMENT UNDER 37 CFR §1.142**  
**and**  
**PRELIMINARY AMENDMENT UNDER 37 C.F.R. §1.115**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants thank Examiner Azpuru for his time and the telephonic interview conducted on September 13, 2007, during which the substance of the restriction requirement as applied to the entire claim set and Applicants' interest in making amendments to the claims were discussed. The interview was concluded with the understanding that the Applicants will respond to the restriction requirement to make the requested election between the device and the method of use claims and file an amended claim set via a preliminary amendment, and that the Examiner shall draft and mail an Interview Summary to Applicants' attorney.

In response to the restriction requirement in the Office Action mailed on August 24, 2007 and pursuant to the Interview conducted on September 13, 2007 in the above identified application, Applicants submit the following response to restriction requirement and the amendment to the above-identified application prior to the first office action on the merits.

Response to Restriction Requirement begins on page 2 of this paper.

Amendments to the Specification begin on page 3 of this paper.

Amendments to the Claims begin on page 7 of this paper.

Remarks begin on page 13 of this paper.

### **RESTRICTION REQUIREMENT**

The Examiner has required, under 35 USC §121, the election of a single disclosed invention for prosecution on the merits. The Examiner contends that the claims are drawn to two sets of inventions that are independent or distinct (Group I – device claims 1-22, and Group II – process of use claims 23-30), and that searching both would constitute a serious burden on the Examiner. The two groups are identified in the Restriction Requirement as having the same classification in the art (class 424, subclass 426+).

Applicants provisionally elect, with traverse, to prosecute the claims identified as Group I (device claims 1-22; being the now amended claims 1, 3-6, 8-22). Applicants make this election with the understanding that if the device claims of this application become patentable, Applicants will request the rejoinder of the process of use claims in this application, identified as Group II invention in the Restriction Requirement.

### **PRELIMINARY AMENDMENT**

Applicants have made amendments to the Specification and the Claims in the present application.

Prior to the first office action on the merits, please amend the above-identified application as follows: